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No. 65, Original

IN THE

Supreme Court of the United States

October Term, 1987

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO,

Defendant.

NEW MEXICO'S MOTION TO STAY ADOPTION OF PECOS RIVER MASTER'S FINAL REPORT

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R. VERGARA PRINTING COMPANY · SANTA FE, NEW MEXICO

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The State of New Mexico requests the Court to stay adoption of the Final Report of the Pecos River Master pending the Special Master's determination of stateline departures for the years 1984 through 1986; as grounds for this motion, New Mexico alleges:

1. Article III.D of the Amended Decree entered by this Court on March 28, 1988, states that: "Unless stayed by this Court, any Final Report . . . shall be effective upon its adoption, and shall be subject to review by this Court only on a showing that the Final Determination is clearly erroneous."

2. On June 23, 1988, the Pecos River Master served on New Mexico and Texas the Final Report of the River Master for water year 1987. In the Final Report the River Master found that New Mexico is credited with an overage of 15,400

acre-feet for water year 1987. Final Report at 1. An "overage" is the amount of water delivered by New Mexico in any water year which exceeded the Pecos River Compact Article III(a) obligation for that year. Amended Decree, Article I.A.3.

3. The Compact provides that determination of stateline departures must be based on three-year periods reckoned in continuing progressive series. Pecos River Compact, Article VI(b).

4. The River Master's calculation of the departure for water year 1987 required calculations of the annual flood inflows for water years 1985 and 1986 as well as 1987. Final Report at 2.

5. At the Special Master hearing held on October 15, 1987, New Mexico and Texas agreed that the Special Master would determine stateline departures for the years 1984 through 1986, which would require calculations of annual flood inflows for each of those years. New Mexico and Texas also agreed that section B.3.g of the Pecos River Master's Manual, relating to the determination of base inflows in the Acme to Artesia reach of the river, would not apply to the years 1984 through 1986 unless and until the Special Master had determined this issue of fact at a hearing set by the Special Master for February 1988. Tr. at 35-36 (October 15, 1987). The February 1988 hearing has been postponed to September 1988. The annual flood inflow calculations for 1985 and 1986 included in the River Master's Final Report might well be in conflict with those to be made by the Special Master.

6. The Pecos River Master's Final Report computed the departure for 1987 using the disputed provision in section B.3.g of the Pecos River Master's Manual to calculate annual flood inflows for 1985 and 1986, although the River Master avoided making any express findings on departures for those years.

WHEREFORE, New Mexico requests the Court to stay adoption of the River Master's Final Report for water year 1987 until after the Court acts on the report of the Special Master to be issued after the September 1988 hearing. New Mexico requests the stay to protect its opportunity to seek a review of the River Master's Final Report after the Court's action on the Special Master's report concerning those issues of fact which the states stipulated would be reserved for determination by the Special Master. If the Court stays adoption of the River Master's Final Report, there could be no prejudice to Texas because the River Master found a substantial overage in 1987.

Respectfully submitted,

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